

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CITY OF GRASS VALLEY,)
) 2:04-cv-149-GEB-DAD
Plaintiff,)
)
v.) ORDER*
)
NEWMONT MINING CORPORATION, a)
corporation; NEWMONT USA LIMITED,)
a corporation; NEWMONT NORTH)
AMERICA EXPLORATION LIMITED, a)
corporation; NEWMONT GOLD COMPANY,)
a corporation; NEWMONT NORTH)
AMERICA LIMITED, a corporation;)
NEWMONT EXPLORATION LIMITED, a)
corporation; NEW VERDE MINES LLC,)
a limited liability company;)
NEWMONT NORTH AMERICA LLC, a)
limited liability company; NEWMONT)
REALTY COMPANY, a corporation;)
NEWMONT CAPITAL LIMITED, a)
corporation; NEWMONT INTERNATIONAL)
SERVICES LIMITED, a corporation,)
)
Defendants.)
_____)

Defendants Newmont Capital Limited ("NCL") and Newmont
International Services Limited ("NISL") (collectively "Defendants")
move for dismissal of Plaintiff's Third Amended Complaint against them

* This matter was determined to be suitable for decision without
oral argument. L.R. 78-230(h).

1 under Federal Rule of Civil Procedure 12(b)(2) arguing that the Court
 2 is without personal jurisdiction over them.¹ Plaintiff opposes this
 3 motion.

4 FACTUAL ALLEGATIONS

5 Plaintiff alleges NCL, NISL, Newmont Mining Corporation,
 6 Newmont USA Limited, Newmont North America Exploration Limited,
 7 Newmont Gold Company, Newmont North America Limited, Newmont
 8 Exploration Limited, New Verde Mines LLC, Newmont North America LLC,
 9 and Newmont Realty Company (collectively "Newmont") owned and/or
 10 operated the Drew Tunnel of the Massachusetts Hill Mine in Grass
 11 Valley, California. (Pl.'s Compl. ¶ 16.) Plaintiff further alleges
 12 it discovered contaminated discharge which flowed from the Drew Tunnel
 13 onto Plaintiff's property. (Id. ¶ 15.) Plaintiff alleges that
 14 Newmont caused Plaintiff's property to be contaminated from this
 15 discharge and Plaintiff seeks recovery for the damage sustained. (Id.
 16 ¶¶ 25, 32; Prayer, ¶ 4.)

17 DISCUSSION

18 I. Legal Standard

19 Rule 12(b)(2) authorizes dismissal of an action for lack of
 20 personal jurisdiction. "[P]laintiff bears the burden of
 21 'demonstrat[ing] facts that if true would support [exercising]
 22 jurisdiction over the [D]efendant.'" Cargnani v. Pewag Aus. G.m.b.H.,
 23 2007 WL 415992, at *4 (E.D. Cal. Feb. 5, 2007). "[P]laintiff is
 24 generally required only to make out a prima facie showing of personal
 25 jurisdiction" to withstand dismissal. Swartz v. KPMG LLP, 476 F.3d
 26 756, 766 (9th Cir. 2007).

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 28 ¹ All references to "Rules" are to the Federal Rules of Civil Procedure.

1 The "exercise of personal jurisdiction 'must comport with
2 the state long-arm statute, and with the constitutional requirements
3 of due process.' [Since] California's long-arm statute extends
4 jurisdiction to the limits imposed by the Due Process Clause, the only
5 question is whether the exercise of jurisdiction is constitutionally
6 permissible." Cargnani, 2007 WL 415992, at *4 (internal citations
7 omitted). There are "[t]wo recognized bases . . . for [exercising]
8 personal jurisdiction over nonresident defendants: (1) 'general
9 jurisdiction' which arises when a [D]efendant's contacts with the
10 forum state are so pervasive as to justify the exercise of
11 jurisdiction over the person in all matters; and (2) 'specific' or
12 'limited' jurisdiction which arises out of the [D]efendant's contacts
13 with the forum giving rise to the subject of the litigation." Revis
14 v. SFG Equip. Leasing Corp., 2007 WL 926799, at *2 (E.D. Cal. Mar. 27,
15 2007).

16 Defendants assert they are nonresidents of California since
17 they are not incorporated in California and their principal place of
18 business is in Colorado, and that neither general nor specific
19 jurisdiction exists because they do not have sufficient minimum
20 contacts with California to justify a California federal court
21 exercising jurisdiction over them. (Defs.' Mot. at 4:10-12, 4:20-21
22 5:7-10.) Plaintiff rejoins "the Court need not determine whether it
23 has general jurisdiction over [Defendants] because [Plaintiff's]
24 claims against [Defendants] arise from [Defendants'] 'forum related
25 activities' in Grass Valley" and therefore, this court has specific
26 jurisdiction over them. (Pl.'s Opp'n at 4:22-24.) Defendants counter
27 Plaintiff "fails to offer any evidence that the alleged contacts of
28 [Defendants] with the State of California ha[s] any relationship to

1 the [Plaintiff's] underlying causes of action." (Defs.' Reply at 2:8-
2 10.)

3 Specific jurisdiction is analyzed under a three-prong test:

4 (1) the non-resident defendant must purposefully
5 direct his activities or consummate some
6 transaction with the forum or resident thereof; or
7 perform some act by which he purposefully avails
8 himself of the privileges of conducting activities
9 in the forum, thereby invoking the benefits and
protections of its laws; (2) the claim must be one
which arises out of or relates to the defendant's
forum-related activities; and (3) the exercise of
jurisdiction must comport with fair play and
substantial justice, i.e. it must be reasonable.

10 Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd., 328 F.3d
11 1122, 1129 (9th Cir. 2003). There must be "a relationship among the
12 [D]efendant, the forum, and the litigation." Helicopteros Nacionales
13 de Colombia, S. A. v. Hall, 466 U.S. 408, 414 (1984). To satisfy the
14 second prong of the analysis the "forum-related activities [must be]
15 causally connected to [P]laintiff's claims." Ross v. Altria Group,
16 Inc., 2004 WL 2055712, at *4 (N.D. Cal. Sept. 7, 2004).

17 Plaintiff presents no evidence that Defendants had contact
18 with either the Massachusetts Hill Mine or the Drew Tunnel. In
19 addition, Plaintiff does not explain how Defendants' alleged contacts
20 with California are causally connected to the subject contaminated
21 discharge that allegedly damaged Plaintiff's property. Since
22 Plaintiff has not presented any facts which support this court's

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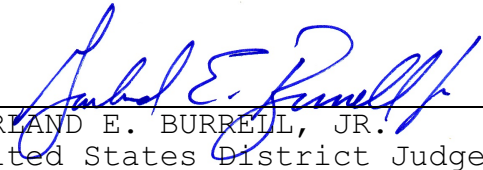
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1 exercise of personal jurisdiction over Defendants, Defendants are
2 dismissed from Plaintiff's Third Amended Complaint.

3 IT IS SO ORDERED.

4 Dated: August 16, 2007

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6 
7 GARLAND E. BURRELL, JR.
8 United States District Judge
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